



# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy

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## Look Before You LEAP

Such is the new policy of the Hoosiers, and we don't mean the basketball team. Haven't you heard about Limitless Exploration/Advanced Pace!? Better known as LEAP, this [industrial park that was intended attract microchip firms to Indiana has instead attracted criticism over water management](#). [Microchip production requires a lot of water](#)—something not readily accessible in the area surrounding the LEAP project. So, the first proposal was to construct a pipeline to bring in water from an aquifer over 40 miles away. Central Indiana's groundwater resources are already under strain from agriculture, gravel mining, and domestic use, so it came as little relief when it was predicted that the industrial park would draw up to 100 million gallons per day (for reference, the nearby town of Lafayette (71,000 people) uses 17 million gallons a day). Indiana's Governor has [put the project on hold until additional studies](#) are completed. Indiana law, like many other states, allows most groundwater users to pump as much as they want. Going forward, some state lawmakers intend to push for measures to implement a permitting system to regulate major users of groundwater.

Unfortunately, in many eastern states, there are few laws and regulations that effectively deal with water shortages, so dealing with these problems is more reactive than proactive. Last year's drought conditions were a bit of a wakeup call for many states that hadn't faced such conditions. As state legislative sessions convene this year, legislatures and planners across are looking to address water scarcity amidst increasing demands. Some are considering new approaches to water governance. In [Iowa, a proposed regional water management system](#) will centralize treatment and transmission for several member utilities in the greater Des Moines area. Planners hope that the newly created [Central Iowa Water Works](#) will help the region better manage water distribution in the face of prolonged drought conditions. And in Texas, legislators will be considering [two bills that would aim to better protect the Ogallala Aquifer](#). If passed, the legislation would restrict where wells can be drilled and propose to [meter](#) groundwater use for large users.

## WOTUS There To Worry About?

2024 could have a lot in store for us. As we jump into the new year, the *Sackett v. EPA* saga will continue to bring twists and turns even for the most seasoned of experts. Several [lawsuits filed in the aftermath of Sackett push for ever more restrictive WOTUS](#) interpretation, adding to the air of uncertainty. One involves a coalition [of twenty-four states that are challenging the Amended WOTUS Rule](#), arguing it extends "jurisdiction far beyond the bounds of the Commerce Clause and the federalism limits embodied in the Constitution, the authority delegated to the Agencies by the CWA, and governing Supreme Court precedent." The complaint says the Amended Rule is too vague and leaves the status of many features uncertain and subject to government oversight. [Another filed by Texas and Idaho](#) puts forth similar arguments. Sure, you can say the EPA and Army Corps might not have things crystal clear, but how could they when someone with no expertise in hydrology announced the legal standard for a complex, longstanding regulatory program?

Just as a reminder, the new WOTUS standard eliminates federal protection for at least 50% of wetlands and streams across the country. So, what is happening to all those wetlands that have lost protection, you ask? Justice Alito assured us that these waters would continue to be protected at the state level, maybe even better protected. If that doesn't sound right, you're right. Legal uncertainty from the pending litigation, along with [concerns over funding and technical capacity within state programs](#), have prompted some states to back off efforts to assume wetland permitting. There is currently no federal funding available to support these state efforts. EPA expects to finalize [updates to the 404 state and tribal assumption process](#) by this summer.

If the eternal WOTUS drama hasn't shown us just how controversial an agency's regulatory definition could be, just throw every other federal executive agency and their implementing laws into the mix. SCOTUS will ring in the new year with oral arguments in a [highly divisive administrative law case that could severely limit the power of agencies and their experts](#). Pursuant to *Chevron* deference, a court should defer to federal agency expertise in implementing statutes that may be unclear, so long as it is a reasonable interpretation. That could all end soon. Make no mistake—despite this seemingly dry legal subject matter, this decision will be one of the most important rulings of the year, if not the decade, impacting all federal agencies from environmental to healthcare to the transportation sector.

## There Must Be Something in the Water(bottoms)

You're likely spending these early days of the new year going through all those unread emails and may not have had time to catch up on all the breaking stories from world of water resources. Wondering what else you missed over [the holiday](#)? Last week, the [EPA granted Louisiana primary regulatory authority over injection wells](#) used in carbon capture and sequestration. These types of wells are regulated under the federal Safe Drinking Water Act to ensure the protection of underground sources of drinking water. Louisiana's Department of Natural Resources will administer the program. Louisiana has the most proposed carbon capture and sequestration projects of any state, and there have been [concerns over safety and sufficient monitoring](#). LDNR is moving forward with CCS project development on state water bottoms, which comes with its own unique set of issues. The agency recently approved the first operating agreements for offshore wind in state waters last month, but it turns out the [wind development area overlaps with a CCS project](#) approved in 2022. We hope things goes swimmingly.

### Coming Up:

Tulane Offshore Wind Conference; New Orleans, LA; January 19, 2024

Tulane Environmental Law Summit; New Orleans, LA; February 23 & 24, 2024

### Water jobs:

Staff Attorney, Atchafalaya Basinkeeper; South Louisiana (flexible location)

[Water Policy and Science Communications Graduate Student Research Fellowship](#); University of Wisconsin-Milwaukee; Milwaukee, WI



The [Tulane Institute on Water Resources Law and Policy](#) is a program of the Tulane University Law School. The Institute is dedicated to fostering a greater appreciation and understanding of the vital role that water plays in our society and of the importance of the legal and policy framework that shapes the uses and legal stewardship of water.

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